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5
UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
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8 JOEY GARCIA,

9 Plaintiff,

10 v.

11 AMBROSE, *et al.*,

12 Defendants.

Case No.: 3:20-cv-00422-MMD-WGC

ORDER

Re: ECF No. 34

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14 Before the court is Plaintiff's Motion for Appointment of Counsel (ECF No. 34). Plaintiff
15 bases his motion on the fact that (1) he is proceeding in forma pauperis and not able to afford
16 counsel, (2) Plaintiff's imprisonment will greatly limit his ability to litigation this case, (3) the
17 issues involved in the case are complex and will require significant research and investigation,
18 (4) Plaintiff has "limited access to the law library and limited knowledge of the law," (5) a trial in
19 this case will likely involve "conflicting testimony, and counsel would better enable plaintiff to
20 present evidence and cross examine witnesses," and (6) Plaintiff has made repeated attempts and
21 efforts to obtain a law, and has been unsuccessful. (*Id.* at 1.)

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1 While any *pro se* inmate such as Mr. Garcia would likely benefit from services of counsel,
2 that is not the standard this court must employ in determining whether counsel should be appointed.
3 *Wood v. Housewright*, 900 F.2d 1332, 1335-1336 (9th Cir. 1990).

4 A litigant in a civil rights action does not have a Sixth Amendment right to appointed
5 counsel. *Storseth v. Spellman*, 654 F.2d 1349, 1353 (9th Cir. 1981). The United States Supreme
6 Court has generally stated that although Congress provided relief for violation of one's civil rights
7 under 42 U.S.C. § 1983, the right to access to the courts is only a right to bring complaints to
8 federal court and not a right to discover such claims or even to litigate them effectively once filed
9 with a court. *Lewis v. Casey*, 518 U.S. 343, 354-355 (1996).

10 In very limited circumstances, federal courts are empowered to request an attorney to
11 represent an indigent civil litigant. The circumstances in which a court will grant such a request,
12 however, are exceedingly rare, and the court will grant the request under only extraordinary
13 circumstances. *United States v. 30.64 Acres of Land*, 795 F.2d 796, 799-800 (9th Cir. 1986);
14 *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986).

15 A finding of such exceptional or extraordinary circumstances requires that the court
16 evaluate both the likelihood of Plaintiff's success on the merits and the *pro se* litigant's ability to
17 articulate his claims in light of the complexity of the legal issues involved. Neither factor is
18 controlling; both must be viewed together in making the finding. *Terrell v. Brewer*, 935 F.2d 1015,
19 1017 (9th Cir. 1991), *citing Wilborn, supra*, 789 F.2d at 1331. Thus far, Plaintiff has been able to
20 successfully articulate his claims.

21 In the matter of a case's complexity, the Ninth Circuit in *Wilborn* noted that:

22 If all that was required to establish successfully the
23 complexity of the relevant issues was a demonstration of

1 the need for development of further facts, practically all
2 cases would involve complex legal issues. Thus,
3 although Wilborn may have found it difficult to
4 articulate his claims *pro se*, he has neither demonstrated
a likelihood of success on the merits nor shown that the
complexity of the issues involved was sufficient to
require designation of counsel.

5 The Ninth Circuit therefore affirmed the District Court's exercise of discretion in denying
6 the request for appointment of counsel because the Plaintiff failed to establish the case was
7 complex as to facts or law. 789 F.2d at 1331.

8 The substantive claims involved in this action are not unduly complex. Plaintiff's
9 Complaint was allowed to proceed on the Fourteenth Amendment excessive force claim against
10 Defendant Ambrose, the state law claim for IIED against Defendant Ambrose, the Fourteenth
11 Amendment equal protection violations against Defendant Ambrose, and the First Amendment
12 retaliation claim against Defendant Ambrose. (ECF No. 18 at 10.) These claims are not so complex
13 that counsel needs to be appointed to prosecute them.

14 Similarly, with respect to the *Terrell* factors, Plaintiff has failed to convince the court of
15 the likelihood of success on the merits of his claims. Plaintiff has not provided any evidence, nor
16 has he made any argument in his motion for appointment of counsel, showing that he is likely to
17 prevail on the merits of his claim.

18 In the exercise of the court's discretion, it **DENIES** Plaintiff's Motion for Appointment of
19 Counsel (ECF No. 34).

20 **IT IS SO ORDERED.**

21 Dated: November 5, 2021.

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23 WILLIAM G. COBB
UNITED STATES MAGISTRATE JUDGE